

APPEAL

**U.S. District Court
District of Rhode Island (Providence)
CIVIL DOCKET FOR CASE #: 1:19-cv-00005-MSM-PAS**

Cepeda v. Fay Servicing, LLC et al
Assigned to: District Judge Mary S. McElroy
Referred to: Magistrate Judge Patricia A. Sullivan
Cause: 28:1332 Diversity—Other Contract

Date Filed: 01/03/2019
Date Terminated: 09/28/2020
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Dolores Cepeda

represented by **John B. Ennis**
1200 Reservoir Avenue
Cranston, RI 02920
401-943-9230
Fax: 946-5006
Email: jbelaw75@gmail.com
ATTORNEY TO BE NOTICED

V.

Defendant

Fay Servicing, LLC

represented by **Patrick T. Uiterwyk**
Nelson Mullins
One Financial Center, Suite 3500
Boston, MA 02111
617-217-4700
Email: patrick.uiterywyk@nelsonmullins.com
ATTORNEY TO BE NOTICED

Defendant

**Wilmington Trust, National
Association as Trustee Solely for
MFRA Trust 2014-2**

represented by **Patrick T. Uiterwyk**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Bank of America, N.A.

represented by **Justin J. Shireman**
Wilson Esler Moskowitz Edelman &
Dicker LLP
260 Franklin Street
14th Floor
Boston, MA 02110
(617) 422-5307
Fax: (617) 423-6917
Email: justin.shireman@wilsonelser.com
ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
01/03/2019	<u>1</u>		COMPLAINT (filing fee paid \$ 400.00, receipt number 0103-1307002), filed by Dolores Cepeda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F-1, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit EE, # <u>15</u> Exhibit FF, # <u>16</u> Exhibit I)(Ennis, John) (Entered: 01/03/2019)
01/03/2019	<u>2</u>		Civil Cover Sheet filed by Dolores Cepeda. Regarding New Case: <u>1</u> Complaint, . (Ennis, John) (Entered: 01/03/2019)
01/03/2019	<u>3</u>		MOTION for Temporary Restraining Order filed by Dolores Cepeda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Ennis, John) (Entered: 01/03/2019)
01/03/2019			Case assigned to Chief Judge William E. Smith and Magistrate Judge Patricia A. Sullivan. (Potter, Carrie) (Entered: 01/03/2019)
01/03/2019	<u>4</u>		CASE OPENING NOTICE ISSUED (Potter, Carrie) (Entered: 01/03/2019)
01/03/2019	<u>5</u>		Civil Cover Sheet filed by Dolores Cepeda. Regarding New Case: <u>3</u> MOTION for Temporary Restraining Order . (Ennis, John) (Entered: 01/03/2019)
01/03/2019	<u>6</u>		MEMORANDUM IN SUPPORT by Dolores Cepeda in support of <u>3</u> MOTION for Temporary Restraining Order . (Ennis, John) (Entered: 01/03/2019)
01/04/2019			NOTICE of Hearing on <u>3</u> MOTION for Temporary Restraining Order: In Chambers Conference and Hearing <i>scheduled for Monday 1/7/2019 at 10:00 AM in Chambers</i> before Chief Judge William E. Smith. (Jackson, Ryan) (Entered: 01/04/2019)
01/04/2019	<u>7</u>		AFFIDAVIT re <u>3</u> MOTION for Temporary Restraining Order by Dolores Cepeda. (Ennis, John) (Entered: 01/04/2019)
01/07/2019	<u>8</u>		MEMORANDUM IN SUPPORT by Dolores Cepeda in support of <u>3</u> MOTION for Temporary Restraining Order . (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Ennis, John) (Entered: 01/07/2019)
01/07/2019	<u>9</u>		NOTICE by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014-2 <i>Notice of Appearance of</i>

			<i>Patrick T. Uiterwyk</i> (Fumarola, Carl) (Entered: 01/07/2019)
01/07/2019	<u>10</u>		RESPONSE In Opposition to <u>3</u> MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. Replies due by 1/14/2019. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Fumarola, Carl) (Entered: 01/07/2019)
01/07/2019	<u>11</u>		NOTICE of Appearance by Patrick T. Uiterwyk on behalf of Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2 (Uiterwyk, Patrick) (Entered: 01/07/2019)
01/07/2019	<u>12</u>		MEMORANDUM IN SUPPORT by Dolores Cepeda in support of <u>5</u> Civil Cover Sheet . (Attachments: # <u>1</u> Exhibit Communications)(Ennis, John) (Entered: 01/07/2019)
01/07/2019			TEXT ORDER denying <u>3</u> Motion for TRO: After review of the Plaintiffs supplemental filings, for the reasons stated on the record in chambers, the Motion for TRO is denied. So Ordered by Chief Judge William E. Smith on 1/7/2019. (Jackson, Ryan) (Entered: 01/07/2019)
01/07/2019			Minute Entry for proceedings held before Chief Judge William E. Smith: In Chambers Conference re: Motion for TRO held on 1/7/2019; counsel present: J. Ennis; P. Uiterwyk. (Court Reporter D. Veitch.) (Jackson, Ryan) (Entered: 01/08/2019)
01/24/2019	<u>13</u>		ANSWER to Complaint by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2.(Uiterwyk, Patrick) (Entered: 01/24/2019)
02/07/2019			TEXT ORDER: Pursuant to Rule 26 of the Federal Rules of Civil Procedure, the parties are directed to begin their mandatory disclosures immediately, before the Rule 16 conference. The Rule 16 conference will be scheduled as soon as possible, either in person or by telephone. To the extent that the parties wish to begin discovery on a cooperative basis prior to the initial conference, they are encouraged to do so. So Ordered by Chief Judge William E. Smith on 2/7/2019. (Urizandi, Nisshy) (Entered: 02/07/2019)
02/07/2019	<u>14</u>		NOTICE of Hearing: Telephonic Rule 16 Conference set for Thursday, 3/7/2019 at 10:00 AM before Chief Judge William E. Smith. The Court

			will initiate the call. Counsel shall provide the Clerk with contact information if it differs from the docket sheet. (Urizandi, Nisshy) (Entered: 02/07/2019)
03/07/2019	<u>15</u>		RULE 16 STATEMENT by Dolores Cepeda. (Ennis, John) (Entered: 03/07/2019)
03/07/2019			Minute Entry for proceedings held before Chief Judge William E. Smith: Telephonic Rule 16 Conference held on 3/7/2019; counsel on call: J. Ennis; P. Uiterwyk. (Jackson, Ryan) (Entered: 03/08/2019)
03/08/2019	<u>16</u>		PRETRIAL SCHEDULING ORDER: Factual Discovery to be completed by 7/8/2019; Dispositive Motions to be filed by 8/5/2019; Pretrial Memorandum due 30 days after decision on any pending motion, or if no motions are pending, by 8/5/2019. So Ordered by Chief Judge William E. Smith on 3/8/2019. (Jackson, Ryan) (Entered: 03/08/2019)
03/08/2019	<u>17</u>		ORDER entered referring case to Mediation pursuant to this Court's Alternative Dispute Resolution Plan, to be <i>tentatively</i> scheduled in mid-April 2019. Information about the Plan can be found by clicking here . So Ordered by Chief Judge William E. Smith on 3/8/2019. (Jackson, Ryan) (Entered: 03/08/2019)
03/28/2019	<u>18</u>		MOTION for an Extension of Time To Serve Defendants <i>to April 26, 2019</i> filed by Dolores Cepeda. Responses due by 4/11/2019. (Ennis, John) (Entered: 03/28/2019)
04/17/2019	<u>19</u>		Summons Request filed by Dolores Cepeda. (Ennis, John) (Entered: 04/17/2019)
04/17/2019	<u>20</u>		Summons Request filed by Dolores Cepeda. (Ennis, John) (Entered: 04/17/2019)
04/17/2019	<u>21</u>		Summons Request filed by Dolores Cepeda. (Ennis, John) (Entered: 04/17/2019)
04/17/2019	<u>22</u>		Summons Request filed by Dolores Cepeda. (Ennis, John) (Entered: 04/17/2019)
04/17/2019			TEXT ORDER granting <u>18</u> Motion for Extension of Time To Serve Defendants up to and including to April 26, 2019. So Ordered by Chief Judge William E. Smith on 4/17/2019. (Jackson, Ryan) (Entered: 04/17/2019)
04/17/2019	<u>23</u>		Summons Issued as to Bank of America, N.A., Fay Servicing, LLC, Wilmington Trust, National

			Association as Trustee Solely for MFRA Trust 2014-2. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(Potter, Carrie) (Entered: 04/17/2019)
04/26/2019	<u>24</u>		AFFIDAVIT of Service, filed by Dolores Cepeda Fay Servicing, LLC served on 4/20/2019, answer due 5/13/2019. (Ennis, John) (Entered: 04/26/2019)
04/26/2019	<u>25</u>		AFFIDAVIT of Service, filed by Dolores Cepeda for Summons and Complaint Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014-2 served on 4/22/2019, answer due 5/13/2019. (Ennis, John) (Entered: 04/26/2019)
04/26/2019	<u>26</u>		MOTION for an Extension of Time To Serve Bank of America, N.A. with Summons and complaint to May 14, 2019 filed by Dolores Cepeda. Responses due by 5/10/2019. (Ennis, John) (Entered: 04/26/2019)
04/29/2019			TEXT ORDER granting <u>26</u> Motion for Extension of Time to Serve Summons on Bank of America, N.A. up to and including 5/14/19. So Ordered by Chief Judge William E. Smith on 4/29/2019. (Jackson, Ryan) (Entered: 04/29/2019)
05/03/2019	<u>27</u>		SUMMONS Returned Executed by Dolores Cepeda. Bank of America, N.A. served on 4/29/2019, answer due 5/20/2019. (Ennis, John) (Entered: 05/03/2019)
05/07/2019			NOTICE of Hearing: Telephone Summary Judgment Conference <i>scheduled for Thursday 5/23/2019 at 9:30 AM</i> before Chief Judge William E. Smith; this office will initiate the call and all counsel should provide direct-dial phone numbers to Case Manager Ryan Jackson (via email) at least 24-hours prior to the date of the conference. (Jackson, Ryan) (Entered: 05/07/2019)
05/13/2019	<u>28</u>		NOTICE of Appearance by Justin J. Shireman on behalf of Bank of America, N.A. (Shireman, Justin) (Entered: 05/13/2019)
05/13/2019	<u>29</u>		Corporate Disclosure Statement by Bank of America, N.A.. (Shireman, Justin) (Entered: 05/13/2019)
05/14/2019	<u>30</u>		Assented MOTION for an Extension of Time <i>to Respond to Complaint</i> filed by Bank of America, N.A.. Responses due by 5/28/2019. (Shireman, Justin) (Entered: 05/14/2019)
05/23/2019			Minute Entry for proceedings held before Chief Judge William E. Smith: Telephonic Summary

		Judgment Conference held on 5/23/2019; counsel on call: J. Ennis; P. Uiterwyk. (Jackson, Ryan) (Entered: 05/23/2019)
05/23/2019		TEXT ORDER granting <u>30</u> Motion for Extension of Time to Respond to Complaint; Reset Deadlines: Bank of America, N.A. answer due 6/19/2019. So Ordered by Chief Judge William E. Smith on 5/23/2019. (Jackson, Ryan) (Entered: 05/23/2019)
06/18/2019	<u>31</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Bank of America, N.A.. Responses due by 7/2/2019. (Shireman, Justin) (Entered: 06/18/2019)
06/18/2019	<u>32</u>	Memorandum of Law in Support of <u>31</u> Motion to Dismiss Complaint filed by Bank of America, N.A.. Responses due by 7/2/2019. (Attachments: # <u>1</u> Exhibit A – Note, # <u>2</u> Exhibit B – Mortgage, # <u>3</u> Exhibit C – Assignment, # <u>4</u> Exhibit D – Service Transfer, # <u>5</u> Exhibit E – Foreclosure Deed)(Shireman, Justin) Modified on 8/28/2019 (Jackson, Ryan). (Entered: 06/18/2019)
07/05/2019	<u>33</u>	MOTION for an Extension of Time to File Response/Reply as to <u>31</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>to July 18, 2019</i> filed by Dolores Cepeda. Responses due by 7/19/2019. (Ennis, John) (Entered: 07/05/2019)
07/08/2019	<u>34</u>	MOTION to Amend/Correct <u>16</u> Pretrial Scheduling Order, filed by Dolores Cepeda. Responses due by 7/22/2019. (Ennis, John) (Entered: 07/08/2019)
07/09/2019	<u>35</u>	RESPONSE In Opposition to <u>33</u> MOTION for an Extension of Time to File Response/Reply as to <u>31</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>to July 18, 2019 with no opposition to relief sought</i> filed by Bank of America, N.A.. Replies due by 7/16/2019. (Shireman, Justin) (Entered: 07/09/2019)
07/09/2019	<u>36</u>	RESPONSE In Opposition to <u>34</u> MOTION to Amend/Correct <u>16</u> Pretrial Scheduling Order, filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. Replies due by 7/16/2019. (Attachments: # <u>1</u> Exhibit A)(Uiterwyk, Patrick) (Entered: 07/09/2019)
07/18/2019	<u>37</u>	NOTICE OF HEARING: Mediation set for 8/21/2019 at 2:30 PM in Room 521 with Court–Appointed Mediator. (Mitchell, Berry) (Entered: 07/18/2019)

07/18/2019	<u>38</u>		MOTION for an Extension of Time to File Response/Reply as to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint to July 25, 2019</i> filed by Dolores Cepeda. Responses due by 8/1/2019. (Ennis, John) (Entered: 07/18/2019)
07/24/2019			TEXT ORDER granting <u>38</u> Motion for Extension of Time to File Response to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint.</i> Responses due by 7/25/2019. So Ordered by Chief Judge William E. Smith on 7/24/2019. (Jackson, Ryan) (Entered: 07/24/2019)
07/25/2019	<u>39</u>		MOTION for an Extension of Time to File Response/Reply as to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint to August 8, 2019</i> filed by Dolores Cepeda. Responses due by 8/8/2019. (Ennis, John) (Entered: 07/25/2019)
07/31/2019	<u>40</u>		RESPONSE In Opposition to <u>39</u> MOTION for an Extension of Time to File Response/Reply as to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint to August 8, 2019</i> filed by Bank of America, N.A.. Replies due by 8/7/2019. (Shireman, Justin) (Entered: 07/31/2019)
08/01/2019			MOTIONS REFERRED: <u>39</u> MOTION for an Extension of Time to File Response/Reply as to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint to August 8, 2019</i> referred for determination to Magistrate Judge Patricia A. Sullivan. (Jackson, Ryan) (Entered: 08/01/2019)
08/02/2019			TEXT ORDER re <u>39</u> Motion for an Extension of Time to File Response/Reply to <u>32</u> Motion to Dismiss For Failure to State a Claim: Although Plaintiff's showing of good cause is barely sufficient, because the time sought is brief, the Court grants Plaintiff's motion (ECF No. 39) for an extension to oppose Defendant's motion to dismiss. As a practical matter, this short delay will not make it more or less likely that the Court will be able to rule on the motion to dismiss prior to the date set for the mediation. Plaintiff's opposition is due on August 8, 2019. NO FURTHER EXTENSIONS

			WILL BE PERMITTED. So Ordered by Magistrate Judge Patricia A. Sullivan on 8/2/2019. (Leyva, Lucia) (Entered: 08/02/2019)
08/08/2019	<u>41</u>		RESPONSE In Opposition to <u>32</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Memorandum of Law in Support of Motion to Dismiss Complaint</i> , <u>31</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Dolores Cepeda. Replies due by 8/15/2019. (Attachments: # <u>1</u> Supporting Memorandum, # <u>2</u> Exhibit F, # <u>3</u> Exhibit G, # <u>4</u> Exhibit H, # <u>5</u> Exhibit F-1, # <u>6</u> Exhibit I, # <u>7</u> Exhibit J, # <u>8</u> Exhibit K, # <u>9</u> Exhibit L)(Ennis, John) (Entered: 08/08/2019)
08/13/2019	<u>42</u>		REPLY to Response re <u>41</u> Response to Motion, <i>BANA's Reply Brief in Support of Motion to Dismiss Complaint</i> filed by Bank of America, N.A.. (Shireman, Justin) (Entered: 08/13/2019)
08/20/2019			MINUTE ENTRY: Mediation scheduled for 8/20/2019 at 2:30 PM, was cancelled and is being rescheduled.(Mitchell, Berry) (Entered: 08/20/2019)
08/21/2019			NOTICE of Hearing: In Chambers Conference re: Summary Judgment and other pending motions <i>scheduled for Wednesday 8/28/2019 at 11:30 AM in Chambers</i> before Chief Judge William E. Smith. (Jackson, Ryan) (Entered: 08/21/2019)
08/28/2019			Minute Entry for proceedings held before Chief Judge William E. Smith: Status and Summary Judgment Conference held on 8/28/2019; counsel present: J. Ennis; P. Uiterwyk, J. Shireman. (Jackson, Ryan) (Entered: 08/28/2019)
08/28/2019			TEXT ORDER finding as moot <u>33</u> Motion for Extension of Time to File Response/Reply ; finding as moot <u>34</u> Motion to Amend/Correct. So Ordered by Chief Judge William E. Smith on 8/28/2019. (Jackson, Ryan) (Entered: 08/28/2019)
08/29/2019	<u>43</u>		NOTICE OF HEARING: Mediation set for 9/27/2019 at 02:00 PM in Room 521 with Court–Appointed Mediator. (Mitchell, Berry) (Entered: 08/29/2019)
09/13/2019	<u>44</u>		MOTION for an Extension of Time To Respond to Motion for Summary Judgment to October 28, 2019 filed by Dolores Cepeda. Responses due by 9/27/2019. (Ennis, John) (Entered: 09/13/2019)
09/18/2019	<u>45</u>		MOTION for an Extension of Time to File Surreply to September 23, 2019 filed by Dolores Cepeda.

			Responses due by 10/2/2019. (Ennis, John) (Entered: 09/18/2019)
09/19/2019	<u>46</u>		RESPONSE In Opposition to <u>44</u> MOTION for an Extension of Time To Respond to Motion for Summary Judgment to October 28, 2019 filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014-2. Replies due by 9/26/2019. (Uiterwyk, Patrick) (Entered: 09/19/2019)
09/19/2019	<u>47</u>		RESPONSE In Opposition to <u>45</u> MOTION for an Extension of Time to File Surreply to September 23, 2019 filed by Bank of America, N.A.. Replies due by 9/26/2019. (Attachments: # <u>1</u> Exhibit A – 9.11.19 email, # <u>2</u> Exhibit B – 9.13.19 email, # <u>3</u> Exhibit C – 9.13.19 emails, # <u>4</u> Exhibit D – 9.16.19 emails, # <u>5</u> Exhibit E – 9.18.19 emails)(Shireman, Justin) (Entered: 09/19/2019)
09/23/2019			TEXT ORDER granting <u>44</u> Motion for Extension of Time; denying <u>45</u> Motion for Extension of Time: The Court GRANTS ECF NO. 44 Plaintiff's Motion for Extension of Time to Respond to Motion for Summary Judgment until October 28, 2019, and allows Plaintiff to take limited discovery to respond to the motion. NO further extensions will be granted. The Court DENIES ECF No. 45 Plaintiff's Motion for Extension of Time to File Surreply to the Motion to Dismiss. So Ordered by Chief Judge William E. Smith on 9/23/2019. (Jackson, Ryan) (Entered: 09/23/2019)
10/01/2019			MINUTE ENTRY: Mediation held on 9/27/2019. No further mediation. Case returned to litigation. (Mitchell, Berry) (Entered: 10/01/2019)
10/09/2019			TEXT ORDER: This matter is hereby transferred to the calendar of District Judge Mary S. McElroy for all further proceedings. Chief Judge William E. Smith no longer assigned to case. So Ordered by Chief Judge William E. Smith on 10/9/2019. (Jackson, Ryan) (Entered: 10/09/2019)
12/12/2019	<u>48</u>		MOTION for Scheduling Conference filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014-2. Responses due by 12/26/2019. (Uiterwyk, Patrick) (Entered: 12/12/2019)
12/13/2019	<u>49</u>		RESPONSE In Support to <u>48</u> MOTION for Scheduling Conference <i>Joining co-Defendants' Motion for Scheduling Conference</i> filed by Bank of America, N.A.. Replies due by 12/20/2019.

			(Shireman, Justin) (Entered: 12/13/2019)
01/15/2020			TEXT ORDER granting <u>48</u> MOTION for Scheduling Conference – So Ordered by District Judge Mary S. McElroy on 1/15/2020. (Urizandi, Nisshy) (Entered: 01/15/2020)
01/15/2020			NOTICE of Hearing: Telephonic Scheduling Conference set for 1/21/2020 at 10:00 AM before District Judge Mary S. McElroy. The Court will initiate the call. Parties are directed to email their contact information to the case manager at Nisshy_Urizandi@rid.uscourts.gov. (Urizandi, Nisshy) (Entered: 01/15/2020)
01/21/2020			Minute Entry for proceedings held before District Judge Mary S. McElroy: Telephone Conference held on 1/21/2020. Present: John Ennis for the plaintiff and Patrick Uiterwyk and Justin Shireman for the the defts. (Urizandi, Nisshy) (Entered: 01/27/2020)
01/22/2020	<u>50</u>		MOTION for Summary Judgment filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. Responses due by 2/5/2020. (Uiterwyk, Patrick) (Entered: 01/22/2020)
01/22/2020	<u>51</u>		MEMORANDUM IN SUPPORT by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2 in support of <u>50</u> MOTION for Summary Judgment . (Uiterwyk, Patrick) (Entered: 01/22/2020)
01/22/2020	<u>52</u>		STATEMENT OF UNDISPUTED FACTS Pursuant to Local Rule 56 by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2 re <u>50</u> MOTION for Summary Judgment . (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Uiterwyk, Patrick) (Entered: 01/22/2020)
01/22/2020	<u>53</u>		AFFIDAVIT re <u>50</u> MOTION for Summary Judgment by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Uiterwyk, Patrick) (Entered: 01/22/2020)
01/22/2020	<u>54</u>		REPLY MEMORANDUM <i>In Support of Motion for Summary Judgment.</i> (Attachments: # <u>1</u> Tab A, # <u>2</u> Tab B, # <u>3</u> Tab C)(Uiterwyk, Patrick) (Entered: 01/22/2020)

02/13/2020	<u>55</u>		RESPONSE In Opposition to <u>50</u> MOTION for Summary Judgment filed by Dolores Cepeda. Replies due by 2/20/2020. (Attachments: # <u>1</u> Supporting Memorandum, # <u>2</u> Affidavit)(Ennis, John) (Entered: 02/13/2020)
02/13/2020	<u>56</u>		STATEMENT OF DISPUTED FACTS by Dolores Cepeda re <u>55</u> Response to Motion. (Ennis, John) (Entered: 02/13/2020)
02/13/2020	<u>57</u>		STATEMENT OF UNDISPUTED FACTS by Dolores Cepeda re <u>55</u> Response to Motion. (Ennis, John) (Entered: 02/13/2020)
02/13/2020	<u>58</u>		MOTION for an Extension of Time to File Response/Reply as to <u>50</u> MOTION for Summary Judgment <i>to February 13, 2020 Nunc pro Tunc</i> filed by Dolores Cepeda. Responses due by 2/27/2020. (Ennis, John) (Entered: 02/13/2020)
02/18/2020			TEXT ORDER granting nunc pro tunc <u>58</u> Motion for Extension of Time to File Response re <u>50</u> MOTION for Summary Judgment. Responses due by 2/13/2020 – So Ordered by District Judge Mary S. McElroy on 2/18/2020. (Urizandi, Nisshy) (Entered: 02/18/2020)
03/17/2020			REVISED NOTICE of Hearing on Motion <u>50</u> MOTION for Summary Judgment and <u>31</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM scheduled for Monday, 5/18/2020 at 10:00 AM via Zoom before District Judge Mary S. McElroy. Counsel will receive Zoom access instructions by email.(Urizandi, Nisshy) Modified on 5/11/2020 (Urizandi, Nisshy). (Entered: 03/17/2020)
05/18/2020			Minute Entry for proceedings held before District Judge Mary S. McElroy: Motion Hearing held on 5/18/2020 <u>31</u> MOTION to Dismiss for Failure to State a Claim filed by Bank of America, N.A.. and <u>50</u> MOTION for Summary Judgment filed by Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014-2, Fay Servicing, LLC, (John Ennis, Esq., for Plaintiff, Patrick Uiterwyk, Esq. for Fay Servicing and Wilmington Trust, and Justin Shireman, Esq. for Bank of America) Attorneys argue motions before the Court. Court Ruling: Court takes motions under advisement (Court Reporter Denise Veitch in Zoom Hearing at 10:05 AM.(See OneNote Courtbook for Minutes) (Farrell Pletcher, Paula) Modified on 5/18/2020 (Farrell Pletcher, Paula). (Entered: 05/18/2020)

06/11/2020	<u>59</u>		MOTION <i>to File Supplemental Memorandum</i> re: <u>55</u> Response to Motion filed by Dolores Cepeda. Responses due by 6/25/2020. (Attachments: # <u>1</u> Exhibit Woel Case)(Ennis, John) (Entered: 06/11/2020)
06/22/2020	<u>60</u>		RESPONSE In Opposition to <u>59</u> MOTION <i>to File Supplemental Memorandum</i> re: <u>55</u> Response to Motion filed by Bank of America, N.A.. Replies due by 6/29/2020. (Shireman, Justin) (Entered: 06/22/2020)
06/25/2020	<u>61</u>		RESPONSE In Opposition to <u>59</u> MOTION <i>to File Supplemental Memorandum</i> re: <u>55</u> Response to Motion filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. Replies due by 7/2/2020. (Uiterwyk, Patrick) (Entered: 06/25/2020)
07/02/2020	<u>62</u>		MOTION for an Extension of Time to File Response/Reply as to <u>61</u> Response to Motion, <i>to July 9, 2020</i> filed by Dolores Cepeda. Responses due by 7/16/2020. (Ennis, John) (Entered: 07/02/2020)
07/09/2020			TEXT ORDER granting <u>62</u> Motion for Extension of Time to File Reply re <u>59</u> MOTION <i>to File Supplemental Memorandum</i> re: <u>55</u> Response to Motion; Replies due by 7/9/2020 – So Ordered by District Judge Mary S. McElroy on 7/9/2020. (Urizandi, Nisshy) (Entered: 07/09/2020)
07/09/2020	<u>63</u>		REPLY to Response re <u>61</u> Response to Motion, filed by Dolores Cepeda. (Ennis, John) (Entered: 07/09/2020)
08/04/2020			TEXT ORDER granting <u>59</u> MOTION <i>to File Supplemental Memorandum</i> re: <u>55</u> Response to Motion – So Ordered by District Judge Mary S. McElroy on 8/4/2020. (Urizandi, Nisshy) (Entered: 08/04/2020)
09/09/2020	<u>64</u>		Supplemental RESPONSE In Opposition to <u>50</u> MOTION for Summary Judgment <i>With Supporting Memorandum</i> filed by Dolores Cepeda. Replies due by 9/16/2020. (Ennis, John) (Entered: 09/09/2020)
09/28/2020	<u>65</u>		MEMORANDUM AND ORDER: Fay and Wilmington's Motion for Summary Judgment (ECF No. <u>50</u>) is GRANTED. Bank of America's Motion to Dismiss (ECF No. <u>31</u>) is GRANTED – So Ordered by District Judge Mary S. McElroy on 9/28/2020. (Urizandi, Nisshy) (Entered: 09/28/2020)

09/28/2020	<u>66</u>		JUDGMENT in favor of Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2 against Dolores Cepeda. This case is dismissed as to Defendant Bank of America – So Entered by the Clerk of Court on 9/28/2020. (Urizandi, Nisshy) (Entered: 09/28/2020)
10/26/2020	<u>67</u>		MOTION to Alter Judgment filed by Dolores Cepeda. Responses due by 11/9/2020. (Attachments: # <u>1</u> Supporting Memorandum)(Ennis, John) (Entered: 10/26/2020)
10/26/2020	<u>68</u>		MOTION to Alter Judgment filed by Dolores Cepeda. Responses due by 11/9/2020. (Attachments: # <u>1</u> Supporting Memorandum)(Ennis, John) (Entered: 10/26/2020)
11/09/2020	<u>69</u>		RESPONSE In Opposition to <u>67</u> MOTION to Alter Judgment <i>and Amend Judgment</i> filed by Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2. Replies due by 11/16/2020. (Uiterwyk, Patrick) (Entered: 11/09/2020)
11/09/2020	<u>70</u>		RESPONSE In Opposition to <u>68</u> MOTION to Alter Judgment <i>and Amend Judgment</i> filed by Bank of America, N.A.. Replies due by 11/16/2020. (Shireman, Justin) (Entered: 11/09/2020)
11/16/2020	<u>71</u>		Assented MOTION for an Extension of Time to File Response/Reply as to <u>69</u> Response to Motion, <i>to November 20, 2020</i> filed by Dolores Cepeda. Responses due by 11/30/2020. (Ennis, John) (Entered: 11/16/2020)
11/16/2020	<u>72</u>		NOTICE by Dolores Cepeda re <u>71</u> Assented MOTION for an Extension of Time to File Response/Reply as to <u>69</u> Response to Motion, <i>to November 20, 2020 Withdrawal of Document 71</i> (Ennis, John) (Entered: 11/16/2020)
11/16/2020	<u>73</u>		Assented MOTION for an Extension of Time to File Response/Reply as to <u>70</u> Response to Motion <i>to November 20, 2020</i> filed by Dolores Cepeda. Responses due by 11/30/2020. (Ennis, John) (Entered: 11/16/2020)
11/20/2020			TEXT ORDER withdrawing <u>71</u> Motion for Extension of Time to File Response/Reply re <u>68</u> MOTION to Alter Judgment; granting <u>73</u> Motion for Extension of Time to File Response/Reply re <u>68</u> MOTION to Alter Judgment. Replies due by 11/20/2020 – So Ordered by District Judge Mary S. McElroy on 11/20/2020. (Urizandi, Nisshy)

			(Entered: 11/20/2020)
11/20/2020	<u>74</u>		MOTION for an Extension of Time to File Response/Reply as to <u>70</u> Response to Motion <i>to November 30, 2020</i> filed by Dolores Cepeda. Responses due by 12/4/2020. (Ennis, John) (Entered: 11/20/2020)
11/20/2020	<u>75</u>		MOTION for an Extension of Time to File Response/Reply as to <u>69</u> Response to Motion, <i>to November 30, 2020</i> filed by Dolores Cepeda. Responses due by 12/4/2020. (Ennis, John) (Entered: 11/20/2020)
11/23/2020	<u>76</u>		RESPONSE In Opposition to <u>74</u> MOTION for an Extension of Time to File Response/Reply as to <u>70</u> Response to Motion <i>to November 30, 2020</i> filed by Bank of America, N.A.. Replies due by 11/30/2020. (Shireman, Justin) (Entered: 11/23/2020)
11/25/2020			TEXT ORDER granting <u>74</u> Motion for Extension of Time to File Reply re <u>68</u> MOTION to Alter Judgment, <u>67</u> MOTION to Alter Judgment ; granting <u>75</u> Motion for Extension of Time to File Response/Reply re <u>68</u> MOTION to Alter Judgment, <u>67</u> MOTION to Alter Judgment. Replies due by 11/30/2020 – So Ordered by District Judge Mary S. McElroy on 11/25/2020. (Urizandi, Nisshy) (Entered: 11/25/2020)
11/30/2020	<u>77</u>		REPLY to Response re <u>70</u> Response to Motion filed by Dolores Cepeda. (Ennis, John) (Entered: 11/30/2020)
01/28/2021		20	TEXT ORDER granting in part and denying in part <u>67</u> Motion to Alter Judgment filed by Dolores Cepeda. Pursuant to Fed. R. Civ. P. 59(e), the plaintiff has not demonstrated any manifest errors of law or fact, newly discovered or previously unavailable evidence, manifest injustice, or an intervening change in law that would warrant altering the judgment granting of defendants, Fay Servicing LLC and Wilmington Trust, N.A. as Trustee Solely for MFRA's, motion for summary judgment with respect to the plaintiff's claims for breach of contract; failure to provide notices of foreclosure counseling and mediation; and violation of the Fair Debt Collection Practices Act. However, the judgment dismissing the Truth in Lending Act ("TILA") claim for lack of federal jurisdiction under <i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016), should have been without prejudice and therefore represented a manifest error of law. The

			Court's decision on the TILA claim was on jurisdictional grounds, not on the merits; therefore, the Court's judgment on the TILA claim shall be amended to state that the dismissal is without prejudice. See Reddy v. Foster, 845 F.3d 493, 505 (1st Cir. 2017) – So Ordered by District Judge Mary S. McElroy on 1/28/2021. (Urizandi, Nisshy) (Entered: 01/28/2021)
01/28/2021		19	TEXT ORDER denying <u>68</u> Motion to Alter Judgment filed by Dolores Cepeda. Pursuant to Fed. R. Civ. P. 59(e), the plaintiff demonstrates no manifest errors of law or fact, newly discovered or previously unavailable evidence, manifest injustice, or an intervening change in controlling law that would warrant altering the judgment dismissing her claim against defendant Bank of America, N.A. – So Ordered by District Judge Mary S. McElroy on 1/28/2021. (Urizandi, Nisshy) (Entered: 01/28/2021)
01/28/2021	<u>78</u>	18	CORRECTED AMENDED JUDGMENT in favor of Fay Servicing, LLC, Wilmington Trust, National Association as Trustee Solely for MFRA Trust 2014–2 against Dolores Cepeda. This case is dismissed without prejudice as to Defendant Bank of America, NA. So entered by the Clerk of Court on 1/28/2021. (Urizandi, Nisshy) (Main Document 78 replaced on 2/1/2021) (Urizandi, Nisshy). (Entered: 01/28/2021)
03/02/2021	<u>79</u>	16	NOTICE OF APPEAL by Dolores Cepeda as to <u>78</u> Judgment, (filing fee paid \$ 505.00, receipt number 0103–1598964) NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf Appeal Record due by 3/9/2021. (Ennis, John) (Entered: 03/03/2021)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DOLORES CEPEDA

VS

CA: 19-cv-0005-MSM-PAS

FAY SERVICING, LLC
BANK OF AMERICA, N.A.
WILMINGTON TRUST, NATIONAL ASSOCIATION AS
TRUSTEE SOLELY FOR MFRA TRUST 2014-2

NOTICE OF APPEAL

Notice is hereby given that Dolores Cepeda, the Plaintiff in the above-referenced matter, hereby appeals to the United States Court of Appeals for the First Circuit from the 2 Orders-Re; Summary Judgment and the Motion to Dismiss entered in this action of February 1, 2021.

Respectfully submitted

/s/ John B. Ennis

John B. Ennis

Signature

JOHN B. ENNIS

Name

2135

Bar Number

John B. Ennis, Esq.

Firm

1200 Reservoir Avenue

Address

Cranston, RI 02920

City, State Zip Code

March 2, 2021

Date

(401)943-9230

Telephone Number

(401)679-0035

Fax Number

Jbelaw75@gmail.com

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DOLORES CEPEDA,

Plaintiff,

v.

BANK OF AMERICA, N.A.; FAY
SERVICING, LLC; and
WILMINGTON TRUST NATIONAL
ASSOCIATION SOLELY AS
TRUSTEE FOR THE MFRA TRUST
2014-2,

Defendants.

C.A. No. 1:19-CV-00005-MSM-PAS

CORRECTED AMENDED JUDGMENT

The Court issues the following Corrected Amended Judgment as a correction to the Amended Judgment, ECF No. 78. It is now hereby ordered, adjudged and decreed as follows:

Pursuant to this Court's orders entered on September 28, 2020 and January 28, 2021, and in accordance with Fed. R. Civ. P. 58, judgment is hereby entered with prejudice in favor of Defendants Bank of America, N.A., Fay Servicing, LLC, and Wilmington Trust National Association Solely as Trustee for the MFRA Trust 2014-2, and against Plaintiff Dolores Cepeda. However, the Plaintiff's Truth In Lending Act claim against Fay Servicing and Wilmington Trust is dismissed without prejudice.

It is so ordered.

January 28, 2021

By the Court:

/s/Hanorah Tyer-Witek
Clerk of Court

MIME-Version:1.0
From:cmecf@rid.uscourts.gov
To:cmecfnef@rid.uscourts.gov
Bcc:
--Case Participants: John B. Ennis (jbelaw75@gmail.com, jbelaw@aol.com, jbennisattorney@aol.com), Justin J. Shireman (giovanna.iannacone@wilsonelser.com, justin.shireman@wilsonelser.com), Patrick T. Uiterwyk (jill.preble@nelsonmullins.com, patrick.uiteryk@nelsonmullins.com), District Judge Mary S. McElroy (judge_mcelroy@rid.uscourts.gov, msmnef@rid.uscourts.gov), Magistrate Judge Patricia A. Sullivan (mag_judge_sullivan@rid.uscourts.gov, pasnef@rid.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:1594469@rid.uscourts.gov
Subject:Activity in Case 1:19-cv-00005-MSM-PAS Cepeda v. Fay Servicing, LLC et al Order on Motion to Alter Judgment
Content-Type: text/html

U.S. District Court

District of Rhode Island

Notice of Electronic Filing

The following transaction was entered on 1/28/2021 at 3:35 PM EST and filed on 1/28/2021

Case Name: Cepeda v. Fay Servicing, LLC et al

Case Number: 1:19-cv-00005-MSM-PAS

Filer:

WARNING: CASE CLOSED on 09/28/2020

Document Number: No document attached

Docket Text:

TEXT ORDER granting in part and denying in part [67] Motion to Alter Judgment filed by Dolores Cepeda. Pursuant to Fed. R. Civ. P. 59(e), the plaintiff has not demonstrated any manifest errors of law or fact, newly discovered or previously unavailable evidence, manifest injustice, or an intervening change in law that would warrant altering the judgment granting of defendants, Fay Servicing LLC and Wilmington Trust, N.A. as Trustee Solely for MFRA's, motion for summary judgment with respect to the plaintiff's claims for breach of contract; failure to provide notices of foreclosure counseling and mediation; and violation of the Fair Debt Collection Practices Act. However, the judgment dismissing the Truth in Lending Act ("TILA") claim for lack of federal jurisdiction under Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016), should have been without prejudice and therefore represented a manifest error of law. The Court's decision on the TILA claim was on jurisdictional grounds, not on the merits; therefore, the Court's judgment on the TILA claim shall be amended to state that the dismissal is without prejudice. See Reddy v. Foster, 845 F.3d 493, 505 (1st Cir. 2017) – So Ordered by District Judge Mary S. McElroy on 1/28/2021. (Urizandi, Nisshy)

1:19-cv-00005-MSM-PAS Notice has been electronically mailed to:

John B. Ennis Jbelaw75@gmail.com, jbelaw@aol.com, jbennisattorney@aol.com

Justin J. Shireman justin.shireman@wilsonelser.com, giovanna.iannacone@wilsonelser.com

Patrick T. Uiterwyk patrick.uiteryk@nelsonmullins.com, jill.preble@nelsonmullins.com

1:19-cv-00005-MSM-PAS Notice has been delivered by other means to: